Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:	)	
	)	
Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020) CRB Webcasting IV**

SOUNDEXCHANGE'S REPLY IN SUPPORT OF MOTION TO REDACT PORTIONS OF INITIAL DETERMINATION

Pandora and the NAB (the "Services")[1] challenge certain of SoundExchange's proposed redactions. In a concurrently filed Notice of Amendment, SoundExchange has withdrawn some of the redactions the Services challenge, in particular where the confidential material is addressed at a sufficiently abstract level so as not to reveal competitively sensitive material. That is not the case with the remaining redactions, each of which contains sufficient detail to reveal the nature of the competitively sensitive or private material that the Services ask the Judges to disclose: (1) specific statements from and relating to Universal Music Group ("Universal") and other record companies' confidential filings with the Federal Trade Commission ("FTC"); (2) discussion of specific terms within confidential agreements between witnesses' companies and third parties, most notably anti-discrimination and MFN terms; and (3) specific quotes from the testimony or documents that reveal record companies' confidential negotiating strategy and communications. The public release of this specific information poses a special risk of placing witnesses' companies at a competitive disadvantage in future negotiations

[1] Although Pandora and the NAB deem themselves the "Services," their Opposition does not purport to represent the position of iHeartMedia, Inc., Sirius XM, or any of the other Services participating in *Web IV*.

and impeding SoundExchange's ability to provide the Judges with as full and robust a record of information in future rate-setting proceedings. Because SoundExchange has proffered a "compelling reason" for protecting each of the challenged redactions from disclosure, the Judges should grant SoundExchange's Motion as amended. Order Responding to SoundExchange's Motion to Redact, Dkt. 2005-1 CRB DSTRA (*Web II*) at 1 (Mar. 28, 2007) ("*Web II Order*").

LEGAL STANDARD

The presumption the Services ask the Judges to impose in favor of disclosure "is not absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Congress granted the Judges authority to issue "orders excluding confidential information from the record of the determination that is published or made available to the public." 17 U.S.C. § 803(c)(5). Congress did not specifically define confidential information for this purpose.

Here, the Judges adopted, in the Protective Order, a definition of "confidential information" as "commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future." Protective Order at 1, (Oct. 10, 2014) ("Protective Order"). Such competitive sensitivity necessarily constitutes "a compelling reason to justify non-disclosure of this information." *Web II Order* at 1,7.

While competitive sensitivity is a compelling reason in and of itself, it is not the only "compelling reason" the Judges may rely on to protect confidential information. Rather, confidentiality is a decision left to the Judges, who are most familiar with "the relevant facts and circumstances of the particular case." *United States v. Hubbard*, 650 F.2d 293, 316-17 (D.C. Cir. 1980). Courts within the D.C. Circuit have identified "six factors that might act to overcome th[e] presumption [in favor of disclosure]: (1) the need for public access to the documents at

issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings." *E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996) (citing *Hubbard*, 650 F.2d at 317-22).

ARGUMENT

I. SoundExchange Has Proposed Redactions of the Initial Determination Where Sufficiently Specific to Reveal Confidential Information and Risk Competitive Harm.

SoundExchange has addressed the Services' concerns carefully, reviewing the challenged redactions with the record companies whose information is at stake. Where possible, SoundExchange has withdrawn its redaction request – in particular where the material is described at a sufficiently abstract level so as to protect against the risk of competitive harm resulting from disclosure.

By contrast, SoundExchange cannot discern a similar governing principle from the redactions that the Services have elected to challenge. The Services beseech the Judges to release the record companies' competitively sensitive information on behalf of "the public." But, notably, the public has not made any such request. While the Services challenge certain redactions in one place (Opp. at 5 regarding [redacted] citing *Web IV Initial Determination*, p. 99), they have elsewhere left the same redaction standing (*see Web IV Initial Determination*, p. 168). Also, while the Services challenge the redaction of confidential documents and emails internal to the record companies, they do not similarly challenge the same types of redactions proposed by iHeartMedia. *See, e.g.*, iHeartMedia's proposed redaction of a description of an internal email regarding [redacted]

[redacted] (*Id.* at 123 n.143); or iHeartMedia's and Sirius XM's proposed redactions of [redacted] (*Id.* at 48-49). The Services here seek public disclosure of competitively sensitive information from the record companies—their future counterparties in negotiation—but not from other Service-side participants. The nature of the challenges calls into question whether the Services' requests are (as they claim) on behalf of the public, or for the purpose of some future anticipated negotiation or proceeding.

Protecting the remaining challenged redactions would not impede the public's ability to understand the Judges' determination or future litigants' ability to cite to it as precedent. By contrast, the record companies and third parties whose information the Services seek to reveal stand to suffer a competitive disadvantage if the material is disclosed. Even if the public's interest were strong, "where both the public interest in access and the private interest in non-disclosure are strong, partial or redacted disclosure would satisfy both interests." *Hubbard*, 650 F.2d at 324-25. SoundExchange narrowly tailored its redactions to that end: to protect against the disclosure of confidential information so specific as to present a special risk of competitive disadvantage or other tangible harm to the record companies or the adjudicatory process. Because each of these redactions is supported by a necessarily "compelling reason" to protect the material from disclosure, the Judges should grant SoundExchange's Motion, as amended.

II. Revealing the Confidential Statements Made to the FTC Would Chill Confidential Submissions to Government Agencies and Competitively Disadvantage the Record Companies.

In the course of the FTC's investigation preceding the Universal/EMI merger, several record companies (including Universal) made confidential submissions advocating their position as to what decision the FTC should reach. The Services now ask the Judges to order these

statements disclosed to the public. That should not happen. Indisputably, Universal (and other companies) made these submissions to the FTC with the expectation that they would remain confidential. The statute governing FTC investigations provides that "[confidential] information . . . shall not be disclosed" except in a few narrow circumstances. 15 U.S.C. § 57b-2. Congress specifically recognized that such submissions may be made on a confidential basis, in order that parties would be free to voluntarily cooperate with government investigations without fear of jeopardizing other competitive interests.

Continued confidential treatment of this material matters to the companies who submitted it, but it also is of great concern to the FTC itself. The FTC "depend[s] on access to sensitive, nonpublic information from businesses and consumers to fulfill [its] mission." Working Party No. 3 on Co-operation and Enforcement, Discussion on How to Define Confidential Information (Oct. 29, 2013).[2] Ordering the disclosure of agency submissions over objections in unrelated litigation could cast a shadow on future government submissions. If such filings and statements lose their confidential status through unrelated litigation, that could potentially chill the advocacy of parties' positions before the FTC. In turn, the FTC's work would be hampered by the parties' inability to advocate their position as they would if Congress's promise of confidentiality were assured.

Furthermore, if disclosed, these specific statements at issue would place the record companies at a competitive disadvantage in future marketplace negotiations with streaming services. The statements generally make the point that [redacted]

[2] Working Party No. 3 on Co-operation and Enforcement, Discussion on How to Define Confidential Information by Organisation for Economic Co-operation and Development, Directorate for Financial and Enterprise Affairs Competition Committee (Oct. 29, 2013) available *at* https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-other-international-competition-fora/1310us-confidentialinfo.pdf

[redacted] or that [redacted]. *Web IV Initial Determination* at 61-62. If made public, these statements would impede the record companies' negotiating position. For example, [redacted].

The Services also argue that because these statements were submitted in 2012, they are no longer sensitive and could not be used by a counterparty to the competitive disadvantage of Universal. The timing element has nothing to do with the arguments here – that the disclosure of confidential material from a government investigation may chill the advocacy efforts in future government investigations. A three- or four-year timeframe also has no impact on the negotiating positions described above. Even if, as a general matter, time did erode the confidentiality in these documents and their contents, three or four years is not a sufficient amount of time lapsed to diminish the submitting parties' strong interest in non-disclosure.

By compelling disclosure here, the Judges risk hampering SoundExchange's ability to collect and provide robust market data from its constituents in future rate-setting proceedings. Witnesses will need to weigh whether the benefits of participating in future proceedings outweigh the risks of having confidential materials disclosed to the public. Certainly, the prospect of having especially confidential submissions to the FTC made public would counsel against full participation. *See* Protective Order at 1.

These compelling reasons for non-disclosure fit squarely within the D.C. Circuit's six-factor test, making clear that the material should remain protected. *See E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 98 F.3d at 1409. The majority of factors weigh in favor of protecting the material. On the first factor, the documents are quoted in the Judges' opinion, but the specific material quoted is not necessary to the public's understanding of the decision. Furthermore, this is not the sort of proceeding that carries especial need for transparency, such as a "criminal trial," "a pre-trial suppression motion," or "where the government is a party." *Friedman v. Sebelius*, 672 F. Supp. 2d 54, 58 (D.D.C. 2009) (citations omitted). The second factor—"the extent of previous public access to the documents"— favors not making these statements public. There has never been any "previous public access." SoundExchange and the record companies have thus far successfully protected the confidential nature of these submissions to the FTC. *See Hubbard*, 650 F.2d at 318-19 ("There is thus no previous access to weigh in favor of the access granted through the district court's unsealing order."). Likewise, the third factor—the fact that someone has objected to disclosure, and the identity of that person—strongly favors redactions. As *Hubbard* explains, "the strength with which a party asserts its interests is a significant indication of the importance of those rights to that party." *Id.* at 319. The record companies and SoundExchange have consistently fought for the confidentiality of this material, requesting confidentiality before the FTC and in this proceeding. SoundExchange even opposed a motion demanding disclosure of the materials in this proceeding *at all*. *See* SoundExchange's Opposition to Licensees' Motion to Compel at 5-8 (Dec. 15, 2014). The fourth factor—the strength of any property and privacy interests asserted—also favors granting the redactions. The privacy interests in the confidential submissions to the FTC are strong, and necessary to ensure future vigorous advocacy. The fifth factor – the possibility of prejudice – is similarly strong in

the record companies' favor. The record companies and the FTC have a strong interest in the confidentiality expectations in the course of investigations. Disclosure in unrelated litigation could hamper the unrestricted consideration of the "sensitive, non-public" information the FTC depends upon to "fulfill its mission." As to the sixth factor—"the purposes for which the documents were introduced during the judicial proceedings"—the Services submitted the material as merely one piece of evidence to establish their view of the market. Although the fact that evidence was submitted at trial weighs in favor of disclosure, these documents comprise a relatively small portion of the overall market evidence.

III. Revealing Confidential Agreement Terms Would Put the Parties to Those Agreements at a Competitive Disadvantage.

As an initial matter, the Judges should grant SoundExchange's motion to redact the confidential terms (and descriptions of these terms) drawn from the agreements presented to the Judges. These agreements often involve non-participant's confidential information and, in granting a motion to compel these documents, the Judges recognized that the Protective Order safeguards non-participant's information: "the Act provides for the entry of a protective order to ensure that such documents may be used in litigation while protecting such documents from disclosure or use outside the confines of a proceeding." Order Granting Services Joint Motion to Compel at 2 (Oct. 30, 2014) (citing 17 U.S.C. § 803(c)(5)). Second, that many of these agreements were set to expire before the Judges' determination would be made public does not lessen their need for confidentiality or "blunt[]" the damage, as the Services put it. Opp. at 4. Although the Judges previously noted that an NPR Settlement Agreement was no longer in effect thereby diminishing the potential harm from disclosure (*Web II Order* at 2), digital streaming licenses are different. These agreements are often renewed or amended on the same or similar terms. Letter amendments often incorporate previous terms. As a result, these recent

agreements may very well reflect the exact (or very similar) terms to those in effect today. That is to say that while some of these agreements may technically be expired, the same terms of those agreements may still be in effect. Disclosure of these confidential terms would negatively impact the competitive standing of both the record companies and their counterparties.

A. Anti-Discrimination and MFN Terms

The Services agree that the names of the contracting parties should be redacted,[3] but nonetheless challenge SoundExchange's proposed redactions regarding anti-discrimination (or anti-steering) clauses and MFNs from specific agreements because, in their view, the discussion is at a general level and "does not reveal the specific contractual language of any particular agreement." Opp. at 7. Each of the remaining redactions contains more than sufficient detail to reveal the precise terms of agreements, which is exactly the kind of competitively sensitive information the Judges should shield from disclosure.

In particular, the Services challenge the following redactions describing the operation of anti-discrimination provisions:

- [redacted]
- [redacted]

[3] Redacting the names of the parties to the agreement is better than redacting nothing. But, as explained below, a full redaction of these provisions is required. Furthermore, the Services presumably also agree that the name of the SoundExchange witness, when cited or otherwise referenced, should also be redacted to preserve the confidentiality of the record company. Doing otherwise would defeat the purpose of redacting the names of the parties to the agreements—which the Services' embrace as a valid redaction to protect competitively sensitive information.

- [redacted]
- [redacted]
- [redacted]

Web IV Initial Determination at 113. And the Services challenge the following redactions regarding MFN provisions:

- [redacted]
- [redacted]
- [redacted]

Id. at 113-14.

Contrary to the Services' characterization of these descriptions as "couched at a general level," these passages are precise descriptions of confidential terms. These descriptions do not lose their competitive sensitivity by virtue of summarizing, rather than quoting, the terms in question. Moreover, regardless of whether these terms are common, the specifics of these terms are not "well known across the industry" as the Services assert. Opp. at 7. If not redacted, a future counterparty would know exactly how these terms operate and could use that knowledge to demand a similar term (or reject a more advantageous term) from that record company in negotiations, to the competitive disadvantage of the record company. *See* Declaration of Aaron Harrison ("Harrison Decl.") ¶ 3; Declaration of Jeff Walker ("Walker Decl.") ¶ 3; Declaration of Ron Wilcox ("Wilcox Decl.") ¶ 3. Furthermore, disclosing these terms would also allow record companies to understand the terms employed by their competitors, thereby giving advantages to some and disadvantaging those whose information is revealed. *See* Harrison Decl. ¶ 3; Walker Decl. ¶ 3; Wilcox Decl. ¶ 3.

B. Specific Terms of the Pandora-Merlin Agreement

The Services challenge a number of redactions relating to the specifics of the confidential agreement between Pandora and Merlin. First, Pandora objects to the redaction of specific references to the [redacted] term of the Pandora-Merlin license because a *Pandora witness* improperly disclosed that term during a public portion of testimony.[4] Opp. at 9. That Pandora was reckless with confidential information causing that information to be revealed in a transcript that will likely only be read by counsel for the parties to this proceeding, however, is

[4] Notably, right before this information was disclosed, counsel for Pandora represented to the Judges that he "believe[d] we can stay in public record." Both Pandora and SoundExchange consistently designated this material restricted throughout the proceedings and it is only now that the Services have identified this mistake. In any event, SoundExchange asks that the Judges also seal this small portion of the transcript.

not a reason to disclose *every* reference to that confidential term. Revealing the exact [redacted] agreed to by the parties gives a competitive advantage to future counterparties in negotiations for the digital performance of sound recordings. As Mr. Charlie Lexton, Head of Business Affairs and General Counsel for Merlin explains, future counterparties can point to that term and use it as a point of leverage in future negotiations to the detriment of Merlin. *See* Lexton Decl. ¶ 3.

Pandora also challenges the redaction of the description of how the steering terms in the Pandora-Merlin agreement operate and the fact that [redacted] were core terms of the agreement. *Web IV Initial Determination* at 94 and 99. These descriptions have the same competitive impact as disclosing the precise numbers. Indeed, the description of the contractual steering terms is not general or high-level, but rather specific and detailed:

> Pandora promises to increase "quantity" (spins) by at least [redacted] above Merlin's [redacted] However, Pandora will not pay a "price" equal to the [redacted] for these additional spins. Instead, in exchange for its promise to play at least [redacted] additional spins, Pandora will [redacted]

Id. at 94. The explanation of how the steering term operates, even without the precise numbers gives a competitive advantage to counterparties looking to employ a similar model for an agreement. *See* Lexton Decl. ¶ 3. Likewise, Merlin's willingness to negotiate for [redacted] is a highly sensitive fact that would unfairly advantage any future counterparty. *See id.*.

C. Confidential Terms from the Apple Agreements

The Service seek to reveal a key term from the Apple [redacted]. Opp. at 8. The major record companies are not aware of the specifics contained in other major record companies agreements with Apple and revealing the identity and a key term would disclose this information to the public, and more importantly, to the record companies' competitors. *See* Walker Decl. ¶ 4; Wilcox Decl. ¶ 4. Revealing this term also discloses confidential information from a non-participant service—Apple, who objected strenuously to its information being included in the proceeding at all and would certainly be harmed by having terms of its agreements disclosed to the public. *See* Walker ¶ 4. If other record companies knew that Apple granted [redacted], they would use that information to seek a competitive advantage against Apple in future negotiations. *See* Walker Decl. ¶ 4; Wilcox Decl. ¶ 4.

IV. Revealing Confidential Information Regarding Negotiation Strategy and Discussions Would Place Record Companies at a Competitive Disadvantage

The Services challenge SoundExchange's proposed redactions of confidential testimony and documents reflecting negotiation strategy. These include:

See, e.g., 4/30/15 Tr. 1141-1142 (A. Harrison) [redacted] 4/28/15 Tr. 508-09 (Kooker) [redacted]

Web IV Initial Determination at 160.

[redacted]

Id. at 125. The Services mention only that these "general statements are at too high a level of abstraction to pose any risks from their disclosure" (Opp. at 8), but each of the statements relates to a specific negotiation and reveals the record companies' strategy and priorities, including information about how the CRB factors into its negotiation priorities. Revealing confidential negotiating strategy gives future counterparties a window into the reasoning behind the record companies' positions. This creates an information asymmetry that disadvantages the record companies in the market. *See* Harrison Decl. ¶ 4; Lexton Decl. ¶ 4.

V. Compelling Reason Justify SoundExchange's Proposed Redactions of Confidential Agreement Terms and Negotiating Strategy

Disclosure of any of the aforementioned descriptions of confidential deal terms and negotiating strategy would put the record companies and third-parties whose confidential information is implicated at a competitive disadvantage. *See* Protective Order at 1. Moreover, if the Judges' determination makes public sensitive confidential information of the witnesses' companies and non-participant companies, SoundExchange may be impaired in its ability to gather and present such information to the Judges in future rate-setting proceedings. *See id.*

Furthermore, the D.C. Circuit's six-factor test favors non-disclosure because the majority of factors weigh in favor of protecting the material. As explained above, the first and sixth factors—regarding the need for public access and the purpose for which the documents were introduced—do not pose a concern that would strongly favor public access here. *See* Part II, *supra*. The Judges' determination is readily accessible and understandable to the public with certain confidential information redacted. This is not an instance in which a party is requesting that a final determination, in its entirety, be withheld from the public record. Regarding the second factor, save Pandora's wrongful disclosure of a confidential deal term in oral testimony, none of the information contained in the proposed redactions is public, widely known, or

common knowledge to business competitors and adversaries. Because this information has not previously been disclosed to the public, this factor favors non-disclosure. *See Hubbard*, 650 F.2d at 318-19. The third factor deals with the strength of the objection and identity of the parties opposing the disclosure of information. Here, apart from Pandora, each of the companies whose information is at stake—including non-parties like Apple who strenuously objected to *any* discovery—strongly object to disclosure. This widespread objection strongly favors redactions. *Id.* at 319. The fourth factor addresses the property and privacy interests at stake which are discussed at length in Part IV, *supra*, and in the declarations of Mr. Harrison, Mr. Lexton, Mr. Walker, and Mr. Wilcox who each explain the competitive harm their companies would face if the confidential terms of their agreements with streaming services and their negotiating strategy were revealed. As they explain, future counterparties would have a competitive advantage because they would come to the negotiation with knowledge of that record company's prior agreements and strategy that they could use as leverage. *See* Harrison Decl.¶¶ 3-4; Lexton Decl.¶ 3-4; Walker Decl. ¶¶ 3-4; Wilcox Decl. ¶¶ 3-4. Likewise, the record companies would be disadvantaged vis-à-vis their competitors (each other) because their competitors would be privy to confidential information about contractual provisions and negotiating strategy and could either demand similar or more advantageous provisions from the same counterparties. The strength of these privacy interests is recognized in the Judges' Protective Order and strongly favors redaction. *See* Protective Order at 1; *see also Nixon*, 435 U.S. at 598 (noting that records may be restricted from public access when it would be used "as sources of business information that might harm a litigant's competitive standing."). Finally, the fifth factor – the possibility of prejudice – is similarly strong in the record companies' favor. Future counterparties to agreements would have access to confidential information—including prior agreement terms and

negotiating strategy—that would give them an informational advantage and potentially result in the record companies' obtaining of less favorable terms. *See* Protective Order at 1.

CONCLUSION

For the foregoing compelling reasons, SoundExchange requests that the Judges grant its Motion to Redact Portions of the Initial Determination, as amended.

Dated: January 7, 2016

Respectfully submitted,

By: Glenn D. Pomerantz / KJ

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:	)	
	)	
Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020)** **CRB Webcasting IV**
	)	

DECLARATION AND CERTIFICATION OF ROSE LEDA EHLER REGARDING RESTRICTED INFORMATION

1. My name is Rose Leda Ehler. I am counsel for SoundExchange, Inc. ("SoundExchange") in Docket No. 14-CRB-0001-WR (2016-2020). I respectfully submit this declaration to comply with the Copyright Royalty Judges' Protective Order, dated October 10, 2014. I am authorized by SoundExchange to submit this declaration on its behalf.

2. I have reviewed SoundExchange's Reply in Support of Motion to Redact Portions of Initial Determination ("Reply"). I also have reviewed the terms of the Protective Order.

3. After consulting with my client and the entities whose interests SoundExchange represents in this proceeding and who have provided confidential information for the preparation of this case, I have determined that portions of the Reply contain information that should be treated as confidential under the Protective Order. Pursuant to the terms of the Protective Order, such confidential information has been designated and marked as "Restricted."

4. The Restricted information that SoundExchange is submitting includes, among other things, (a) materials or testimony relating to or constituting contracts, contract terms, or

performance data that are proprietary, not publicly available, commercially sensitive, or subject to express confidentiality obligations in agreements with third parties; (b) materials or testimony relating to or constituting internal business information, negotiating positions, negotiation strategy, financial data and projections, and competitive strategy that are proprietary, not publicly available, or commercially sensitive; and (c) third party information provided in confidence, not publicly available, or subject to express confidentiality obligations.

5. In addition, I have determined that portions of the Reply contain information previously designated "Restricted" by a participant in this proceeding pursuant to the terms of the Protective Order.

6. The public disclosure of the Restricted information that SoundExchange is submitting would be likely to cause significant harm. The disclosure would provide an unfair competitive advantage to competitors and/or current or future negotiating counterparties of those whose information would be disclosed. Many but not all competitors and counterparties also are parties to this proceeding. Public disclosure of this information also would place SoundExchange, the entities whose interests it represents and their business partners, and other entities at a significant commercial disadvantage and would pose serious risk to their business interests and strategies.

7. Pursuant to the terms of the Protective Order, SoundExchange is submitting under seal the materials designated Restricted and is redacting such materials from the Public version of its submission.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 7, 2016

/s/ Rose Leda Ehler

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re	)	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF AARON HARRISON

I, AARON HARRISON, DECLARE:

1. I am Senior Vice President, Business & Legal Affairs, Global Digital Business, UMG Recordings, Inc. ("UMG"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Reply in Support of its Motion to Redact Portions of the Initial Determination. The matters set forth in this declaration are based on my own personal knowledge and experience. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. Based on my experience negotiating digital service agreements, I am submitting this declaration to help the Judges understand the competitive disadvantage that I believe UMG would face if SoundExchange's Motion to Redact Portions of the Initial Determination is denied.

3. I understand that Pandora and NAB are seeking to disclose the following descriptions of terms [redacted]:

[redacted]

[redacted]

These statements reflect confidential contract terms from recent UMG agreements for digital streaming rights. Even if the names of the business partners were redacted, revealing the descriptions of the contractual provisions publicly would disadvantage UMG. Future counterparties would develop an understanding of how UMG seeks to structure these terms across a range of agreements and would use that information in negotiations with UMG. Furthermore, if revealed, our competitors would start to demand similar terms in their agreements with streaming services. As a result, it would be more difficult for the streaming services to agree to (or comply with) UMG's provisions. UMG believes that it benefits from specially negotiated, unique provisions. If all of the record labels had similar provisions, they would lose their special impact for UMG's business.

4. I also understand that Pandora and NAB have challenged the redaction of a description of my testimony: [redacted]. If revealed, I would expect that our streaming service business partners—many of

which use the same law firm—would start to argue that their service is similar and therefore the [redacted] should be precedential in those negotiations, too. This would put UMG at a competitive disadvantage and improperly set precedent for market negotiations.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 6, 2016

Aaron Harrison

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re	)	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF CHARLIE LEXTON

I, CHARLIE LEXTON, DECLARE:

1. I am Head of Business Affairs and General Counsel for Music and Entertainment Rights Licensing Independent Network ("Merlin"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Reply in Support of its Motion to Redact Portions of the Initial Determination. The matters set forth in this declaration are based on my own personal knowledge and experience. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. The purpose of this declaration is to set forth, based on my experience negotiating digital streaming licenses, the competitive disadvantage that I believe Merlin would face if SoundExchange's Motion to Redact Portions of the Initial Determination is denied.

3. I understand that Pandora and the NAB challenge the redaction of the number [redacted], which is the percentage of revenue term in our agreement with Pandora, the fact that [redacted] were core terms of that agreement, and a detailed description of how the steering term operates. If these terms were made public, I believe digital streaming services would be able to use this information as leverage—either to gain something

or argue against giving something up—in negotiations and Merlin would be disadvantaged in efforts to improve on or refine these terms in those negotiations. This would put Merlin at a distinct competitive disadvantage vis-à-vis others who did not have similar information revealed.

4. I also understand that Pandora and the NAB are seeking to have the following quotation from my internal correspondence included in the public determination without redactions: [redacted] This statement is confidential and reveals my thinking and negotiating strategy. This stands in stark contrast to a simple factual statement that any agreement could be evidence before the CRB. From my experience, I believe that if this quotation were made public, future counterparties to negotiations would gain a competitive advantage over Merlin because they would have a window into how Merlin approaches negotiations and what points may be of value to Merlin.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 6, 2016

Charlie Lexton

PUBLIC VERSION

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re **DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)**	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF JEFF WALKER

I, JEFF WALKER, DECLARE:

1. I am Executive Vice President & Head, Business & Legal Affairs, Global Digital Business at Sony Music Entertainment ("Sony Music"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Reply in Support of its Motion to Redact Portions of the Initial Determination. The matters set forth in this declaration are based on my own personal knowledge and experience. If called as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. Based on my experience negotiating digital service agreements, I am submitting this declaration to help the Judges understand the competitive disadvantage that I believe Sony would face if SoundExchange's Motion to Redact Portions of the Initial Determination is denied.

3. I understand that Pandora and NAB are seeking to disclose the following descriptions of terms [redacted]:

[redacted]

[redacted]

These are detailed descriptions of confidential contractual provisions from recent agreements with our business partners. Even if the names of the business partners were redacted, revealing the descriptions of the contractual provisions publicly would put Sony at a competitive disadvantage. Our competitors, who also have agreements with these streaming services, may be able to discern the particular service and they would likely seek to include a similar provision in their next agreement with that services, or they would craft a counter-provision to address the impact of Sony's provision. In addition, future counterparties and our competitors would develop an understanding of how Sony seeks to structure these terms in its agreements. This would give a counterparty a general competitive advantage in any negotiation for digital streaming rights. This would also disadvantage Sony vis-à-vis other record companies engaged in negotiations with the same counterparties.

4. I understand that Pandora and NAB also seek to reveal the fact that Sony received [redacted] in our agreement with Apple for iTunes Radio. This fact is confidential between Sony and Apple and unknown to other record companies or streaming services. If revealed, this could competitively disadvantage Sony in future negotiations because a service would know that Sony has previously agreed to such a term. Based on my negotiations

with Apple – a non-participant here – I also believe Apple would view these terms as competitively sensitive and potentially detrimental to Apple's future negotiating positions.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 7, 2016

Jeff Walker

PUBLIC VERSION

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re	)	
DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (*WEB IV*)	)	**DOCKET NO. 14-CRB-0001-WR (2016-2020)**

DECLARATION OF RON WILCOX

I, RON WILCOX, DECLARE:

1. I am Executive Counsel, Business Affairs, Strategic and Digital Initiatives Warner Music Group. ("WMG"). I submit this declaration in support of SoundExchange, Inc.'s ("SoundExchange") Reply in Support of its Motion to Redact Portions of the Initial Determination. The matters set forth in this declaration are based on my own personal knowledge and experience. If called again as a witness in these proceedings, I could and would testify competently to the contents of this declaration.

2. Based on my experience negotiating digital service agreements, I am submitting this declaration to help the Judges understand the competitive disadvantage that I believe WMG would face if SoundExchange's Motion to Redact Portions of the Initial Determination is denied.

3. I understand that Pandora and NAB are seeking to disclose the following descriptions of terms from our agreements with [redacted]:

[redacted]

[redacted]

These statements describe precisely how these confidential contract terms operate and are drawn from recent agreements between WMG and streaming services. If revealed publicly, WMG would be placed at a significant competitive disadvantage. Counterparties and our competitors would know how WMG has structured these terms in recent agreements. As a result, in future negotiations with streaming services, the service would know the terms to which Warner has agreed in the past and would expect Warner to agree to the same terms. This makes it difficult for Warner to negotiate for more advantageous terms. With respect to Warner's competitors, they may insist on comparable deal terms, especially if they had previously accepted a lesser term. This would disadvantage WMG vis-à-vis other record companies engaged in negotiations with the same counterparties.

4. I understand that Pandora and NAB also seek to reveal the fact that Warner received [redacted] in our agreement with Apple for iTunes Radio. This fact is confidential and unknown to other record companies or streaming services. If revealed, this could competitively disadvantage Warner in future negotiations because a service would know that Warner has previously agreed to such a term. Based on my negotiations with Apple – a non-participant here – I also believe Apple would view these terms as competitively sensitive and potentially detrimental to Apple's future negotiating positions with other record companies.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 6, 2016

Ron Wilcox

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2016, I caused a copy of the foregoing RESTRICTED — **SOUNDEXCHANGE, INC.'S REPLY IN SUPPORT OF AND NOTICE REGARDING AMENDMENT TO MOTION TO REDACT PORTIONS OF INITIAL DETERMINATION AND DECLARATIONS IN SUPPORT THEREOF** to be served via electronic mail and first-class, postage prepaid, United States mail, addressed as follows:

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M Larraondo-Klipper

Martha Larraondo-Klipper